

A perpetual care fund, the income of which is turned over to a profit-making cemetery company for use in connection with the maintenance of the cemetery properties and the burial lots, is not entitled to exemption from Federal income taxation as an organization described in section 501(c)(13) of the Internal Revenue Code of 1954.

Advice has been requested whether a perpetual care fund operated in connection with a profit-making cemetery company is exempt from Federal income tax under section 501(a) of the Internal Revenue Code of 1954 as an organization described in section 501(c)(13).

An irrevocable trust was formed by agreement between the X cemetery company and a trustee to provide a permanent maintenance fund for the burial lots, the buildings, roads and improvements which were or subsequently might become a part of the property constituting the cemetery.

In a separate agreement between X cemetery company and the purchaser of each lot, X cemetery company agrees to place ten percent of the sales price of each lot in the perpetual care fund and to provide at its own expense for the care, maintenance and upkeep of the cemetery until such time as the income from the perpetual care fund becomes sufficient to provide such care. The perpetual care trust instrument provides for the trustee to turn over the income of the perpetual care fund semiannually to the X cemetery company. In turn, the X cemetery company must account to the trustee to show that the funds are expended for the purposes set forth in the trust agreement.

The X cemetery company is organized and operated for profit and does not claim to be exempt from Federal income taxation.

Section 501(c) of the Code describes certain organizations, exempt from Federal income tax under section 501(a) and reads, in part, as follows:

(13) Cemetery companies owned and operated exclusively for the benefit of their members or which are not operated for profit; and any corporation chartered solely for burial purposes as a cemetery corporation and not permitted by its charter to engage in any business not necessarily incident to that purpose, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Perpetual care funds operated in connection with nonprofit cemeteries have been held to be exempt from taxation as organizations described in section 501(c)(13) of the Code. See Revenue Ruling 58-190, C.B. 1958-1, 15. Implicit in this conclusion is a recognition that the perpetual care funds are providing an essential part of the functions of the cemetery

companies themselves. They are thus so closely connected with the actual cemetery companies that they partake of the character of the cemetery companies for exemption purposes. Therefore, where the company actually operating the cemetery is itself a profit-making enterprise, the perpetual care fund operated in connection with it would also partake of this character and would not be entitled to exemption from Federal income tax. Furthermore, as the services and facilities furnished by a perpetual care fund to a cemetery operated for profit constitute substantial assistance in its business by affecting the salability and selling price of lots, and relieving the company itself of a legal or contractual obligation, net earnings of such funds inure to the benefit of the profit company or its shareholders.

Accordingly, it is held that the perpetual care fund in the instant case, which is operated in connection with a profit-making cemetery company, is not entitled to exemption from Federal income taxation as an organization described in section 501(c)(13) of the Code.